

tax documents on the grounds that the Chair's demand for the other tax documents unrelated to the payments to Berman and Speir were not pertinent to the stated purpose of the Committee's investigation and, additionally, further inquiry into POGO's tax status was outside the Committee's jurisdiction. Ironically, POGO's tax returns, including those subpoenaed by the Majority, are publicly available. The House should not find Mr. Rutter in contempt for not producing material which is not pertinent and which the Majority could have accessed through widely available means.

(2) *Failure to Produce:* The Resolution cites Mr. Rutter with contempt for failure to produce a log of the responsive records withheld by him under a claim of privilege. A log is not specifically required under the subpoena. The subpoena required Mr. Rutter to "specify and characterize the record so withheld and specify the objection or constitutional privilege under which the record is withheld." As is evidenced by the Majority's own exhibit, this requirement has been met. Therefore, the House should not find Mr. Rutter in contempt on these grounds.

*D. Ms. Danielle Brian Stockton*

June 18, 1999 Subpoena Duces Tecum

(1) *Redacting Records:* The Resolution cites Ms. Brian with contempt for withholding minutes of two POGO Board Meetings. Ms. Brian has asserted that she does not hold or possess these or any other documents not previously supplied to the Committee under her subpoena. She was not responsible for maintaining these documents. In addition, POGO, through its attorney, has supplied redacted versions of these documents, including revisions, in response to the subpoena issued to the corporate entity. The House should not find Ms. Brian in contempt for not producing records that which she does not possess.

(2) *Withholding Records:* Under this citation, the Resolution charges Ms. Brian with contempt for not producing agendas and minutes from POGO Board Meetings that occurred on January 5, 1995; December 9, 1996; April 26, 1999; and September 9, 1999. POGO produced these records, through its attorney as required by the subpoena issued to POGO. Ms. Brian has asserted that she does not possess these documents and was not responsible for maintaining the documents. As Ms. Brian does not have such records within her possession, she could not produce them. Instead, the documents were provided to the Committee by POGO's attorney in response to the subpoena of POGO. The House should not hold Ms. Brian in contempt for not producing documents that she does not have in her possession and which have been provided to the Committee under the proper subpoena.

February 17, 2000 Subpoena Duces Tecum

(1) *Failure to Comply:* The Resolution cites Danielle Brian with contempt for not producing unredacted telephone records from her office and personal residence for a period covering eighteen months. Ms. Brian offered to provide a redacted version of the phone records under this subpoena. However, the Majority insisted that they be allowed to review all phone records—personal and professional—from the 18-month period and then decide which ones to copy for their files. POGO is an organization that works extensively with whistleblowers from a wide array of areas, including defense contractor and health care fraud and they have asserted a First Amendment privilege against allowing unfettered access to these. Since Ms. Brian was willing to provide redacted versions of these records, and the Majority refused to negotiate a reasonable alternative, the

House should not find Ms. Brian in contempt on this charge.

Subpoena to Appear on May 18, 2000

*Failure to Reply:* The Resolution charges Ms. Brian with contempt for her refusal to answer a question relating to the extent, if any, of her knowledge of Johnson v. Shell litigation while it was under seal. As discussed above, Ms. Brian should not be held in contempt for declining to answer a question related to the Johnson v. Shell litigation. The Majority has failed to provide either the connective reasoning or build a foundation to justify this question as pertinent to the investigation. *Gojack v. United States*, 384 U.S. 702 (1966). As stated above, it is not a legitimate purpose for a congressional investigation to seek to obtain and disclose information to assist parties in pending. Moreover, at the time the Subcommittee Chair ruled the question "pertinent" during the hearing and polled the Members on the question, there was no quorum present as required under the Committee on Resources' rules. Accordingly, the House should not cite Ms. Brian for contempt in this instance.

*E. Project on Government Oversight*

February 17, 2000 Subpoena Duces Tecum

(1) *Refusal to Produce Records:* The Resolution cites POGO, a nonprofit corporate entity, with contempt for not producing records showing the names and office addresses of POGO Directors responsible for POGO's oil royalty effort from its inception in 1993 through the present. In correspondence dated February 28, 2000, POGO's attorneys stated that POGO had not withheld records with current Board Members' names and addresses. They gave these records to the Committee in 1999 when POGO provided its 1998 nonprofit 501(c) corporate tax forms, which included that information. On pertinency grounds, POGO has declined to provide the names and addresses of those Board Members (if any) that were on the Board in 1994 and have left since that time. They have provided the name and address of one Board Member who joined in 1999.

Secondly, the Resolution cites POGO for contempt for not producing records concerning payments to Messrs. Berman and Speir discussed by POGO since January 1, 1999. To the contrary, POGO, through its attorneys, has provided the documents to the Committee. Accordingly, the House should not find POGO in contempt on these grounds. Moreover, even if the House was to find POGO in contempt, it is unclear who the U.S. Attorney would be compelled to prosecute as the Majority has not specified which of the officers of board of directors would be the responsible parties. At least one of the board members, Chuck Hamel, testified that he had been recused from all matters dealing with the royalty underpayment litigation.

(2) *Refusing to Comply:* The Resolution cites POGO for refusing to provide a log of responsive records withheld from production under this subpoena. POGO, through its attorneys, has asserted that they have produced all responsive records. In those instances where they have declined to provide a document, they have, as required under the subpoena, provided a written explanation. A log is not specifically required under the subpoena. The subpoena required POGO to "specify and characterize the record so withheld and specify the objection or constitutional privilege under which the record is withheld." This requirement has been met. Therefore, the House should not find POGO in contempt. Again, even if the House were to find this nonprofit corporate entity in contempt, it is unclear who the U.S. Attorney would be compelled to prosecute, as the Resolution does not specify which of the officers or board of directors are to be prosecuted.

Mr. YOUNG of Alaska. Mr. Speaker, I yield 30 seconds to the gentleman from Texas (Mr. Brady).

Mr. BRADY of Texas. Mr. Speaker, we asked. To the attorney for the special interest group we asked, "Did you have knowledge of this lawsuit that was under seal, that was held confidential by the Court?" All he had to do was answer, "No, of course not. I am a private citizen. Why would I know of a sealed document?"

Of the two government employees, we wanted to ask, "What service did you provide to receive three-quarters of a million dollars?" Because one does not get something for nothing in this world.

We could never get these basic pertinent questions answered. That is the truth we were seeking.

Mr. YOUNG of Alaska. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, we have heard a lot today, and I would just like to clarify some of the things that were said. The rules of this House, the Supreme Court say the committee can judge what is pertinent, not the witness. That is the rules and that is the Supreme Court. We told all three of these parties that was the case, and they still declined to answer.

Let us make it perfectly clear that POGO is not the whistleblower. Neither are the gentlemen or ladies that are involved in these contempt citations the whistleblowers. The whistleblower, Johnson, was filed on top of for money. POGO now is under criminal investigation as I stand here and speak.

Mr. Speaker, I know that this is such a serious debate, that we have to have more debate. So I ask unanimous consent, pursuant to clause 2 of rule XVI, to withdraw the resolution.

The SPEAKER pro tempore (Mr. PEASE). Pursuant to clause 2 of rule XVI, and the precedent of the House of April 8, 1964, the gentleman does not require unanimous consent. The gentleman may by right withdraw the resolution at this point.

The resolution was withdrawn.

## RECESS

The SPEAKER pro tempore. Pursuant to clause 12 of rule I, the Chair declares the House in recess subject to the call of the Chair.

Accordingly (at 11 o'clock and 36 minutes a.m.), the House stood in recess subject to the call of the Chair.

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## AFTER RECESS

The recess having expired, the House was called to order by the Speaker pro tempore (Mr. LATOURETTE) at 12 o'clock and 10 minutes p.m.